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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture
Fifty-fourth session

Summary record (partial)* of the 1304th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 29 April 2015, at 10 a.m.

Chairperson: Mr. Grossman

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Second periodic report of Serbia

1. *At the invitation of the Chairperson, the delegation of Serbia took places at the Committee table.*

2. **Mr. Ilic** (Serbia), introducing the State party's report, said that under the Constitution, the general provisions of international law and the eight international treaties ratified by Serbia had been made an integral part of and were directly applied in the national legal system.

3. Serbia had recently taken over the chairmanship of the Organization for Security and Cooperation in Europe and had been actively involved in the protection and promotion of human rights and fundamental freedoms. As a member of the Council of Europe, Serbia had ratified several human rights conventions, including the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. As a candidate country for European Union accession, Serbia had also begun the process of legal and institutional reform, which included the adoption of the rule of law and the protection and promotion of human rights.

4. It should be noted that Serbia had been unable to monitor the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Kosovo and Metohija. Pursuant to United Nations Security Council resolution 1244 (1999), administration of that province had been mandated to the United Nations Interim Administration Mission in Kosovo (UNMIK). Serbia called on the Committee to invite UNMIK to submit a parallel report on the application of the Convention in Kosovo and Metohija, and Serbia would be willing to share information to facilitate that process.

5. As part of its judicial reform process, the Government had introduced new legislation and established the High Council of the Judiciary and the State Prosecutorial Council to oversee the selection, nomination and dismissal of judges, presiding judges and prosecutors, and to implement measures to ensure the effectiveness of the courts and offices of the public prosecutor. The Government was also committed to strengthening and streamlining the regulatory and institutional framework and bolstering judicial cooperation and capacity in order to actively prevent and combat crime. The National Judicial Reform Strategy for the period 2013–2018 had been introduced to enhance judicial independence, transparency and efficiency. An action plan was being drafted with input from the European Commission to prepare for future legal reforms and pave the way for accession to the European Union.

6. New legislation and a national plan of action to tackle discrimination had been adopted. Various initiatives had also been introduced to prevent and combat gender-based violence against women, including, among others, a national strategy for preventing and combating domestic violence, a general protocol on inter-agency cooperation in cases of domestic violence, and a series of institutional mechanisms, standards and procedures.

7. In order to reduce crime and reoffending rates, overhaul the detention system and assist the resettlement of convicted persons, a national plan of action on the enforcement of penal sanctions had been launched in August 2014, which contained specific measures to address prison conditions and overcrowding, establish new treatment and training

programmes for inmates, improve prison staff training, promote alternative measures to imprisonment and enhance oversight and monitoring mechanisms.

8. Cases of potential torture and other cruel, inhuman or degrading treatment alleged by prisoners had to be recorded and investigated promptly in order to initiate disciplinary proceedings against the employee responsible or, if reasonable grounds had been established, file a criminal complaint. A complaints mechanism for prisoners had been established under the Law on Enforcement of Penal Sanctions in 2006, which had been amended in 2014 to introduce the requirement for judges to monitor the application of such sanctions as an additional layer of protection for prisoners' rights. Judges visited the institutions under their jurisdiction and ruled on any complaints filed by prisoners, imposing disciplinary sanctions or opening criminal proceedings in cases of abuse or torture by prison staff.

9. Pursuant to the Law Ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 2011, external oversight of criminal sanctions had been assigned to the Ombudsman as the country's national preventive mechanism. The Ombudsman cooperated with regional advocates and civil society organizations engaged in the promotion and protection of human rights. Representatives of the latter also had the right to speak with prisoners in private, visit correctional facilities and access the documentation needed to monitor the system.

10. A State-funded centre had been established to provide and coordinate emergency care and support for victims of human trafficking. The social care system also provided victims with access to financial assistance and other services, accommodation and psychological support. Serbia was in the process of adopting a national strategy for the period 2015–2020, along with a related action plan on preventing and suppressing trafficking in persons, particularly women and children, and protecting victims.

11. Full protection and support had normally been provided to all refugees, of which there were currently some 44,000, as well as to 220,000 displaced persons. Internally displaced persons from Kosovo and Metohija had been accorded full rights in Serbia and the Government had established institutional frameworks and support mechanisms. However, 16 years on, suitable conditions for their return to Kosovo and Metohija had not been achieved. There were various barriers preventing their long-term resettlement, including the dire security situation and criminal behaviour toward minority communities and returnees, many of which had reportedly gone unchecked by the competent authorities. Serbia once again called on the Committee to seek further information in that regard from UNMIK, as well as on the issues raised in a Council of Europe report citing inhuman treatment and forced disappearances perpetrated in the course of an organ trafficking operation.

12. Asylum seekers were provided with all basic services as well as free legal assistance, psychosocial support and access to translators. A new crime had been established in the Criminal Code to reduce the number of false asylum seekers, and those found to have been transporting false asylum seekers could be prosecuted and imprisoned for up to 8 years, depending on the gravity of the offence.

13. Serbia had been cooperating with the International Criminal Tribunal for the Former Yugoslavia and had so far approved all 2,160 requests for access to documentation and witnesses. Access to the State archives had also been granted to the prosecution and defence on 50 occasions so far. In relation to the War Crimes Prosecutor's Office, a series of measures had been undertaken to build capacity, to establish a priority list for war crimes cases awaiting trial, to ensure full access and cooperation with the international criminal

tribunals and to provide training on international humanitarian law and criminal investigation to the appropriate personnel.

14. **Mr. Tugushi** (Country Rapporteur) said that the definition of the crime of torture in the Criminal Code was not consistent with article 1 of the Convention. Of particular concern was the fact that the statute of limitations had not been repealed for crimes involving torture. Information should be provided on why no amendment had yet been made and whether there were plans to introduce a separate article defining torture in the Criminal Code.

15. He said that the Committee welcomed the introduction of the new Criminal Procedure Code and the standards and safeguards provided for the prevention of torture and ill-treatment of persons deprived of liberty. However, the Committee had received reports that the registration of persons in detention was not always properly completed. There had also been complaints that State-appointed lawyers often arrived late if at all. Sometimes they only appeared at the initial hearing and many tried to convince defendants to confess. Was the State party taking action to investigate and remedy those deficiencies in the system?

16. Screening of injuries on entry into detention facilities had not been carried out properly or had been superficial at best. Law enforcement officials had often been present during medical examinations; statements had not always been taken from detainees and, in the absence of thorough screening, doctors could not arrive at conclusions on the causes of injury. It would be useful to know whether the Government had taken steps to rectify those failings and issue directives to ensure that improvements would be applied consistently.

17. The Committee had been made aware of cases of police brutality occurring at the time of arrest or questioning. Physical violence had reportedly been used on occasions to obtain confessions. The number of investigations and disciplinary procedures launched seemed relatively low compared with the number of complaints received. The Ombudsman had also complained that such investigations were lengthy, inefficient and often led to no conclusion. He also said that it was likely that the superficial nature of the medical examinations had affected the outcome of investigations.

18. **Mr. Tugushi** asked whether sufficient human, material and financial resources had been made available to the Ombudsman in his new function as the national preventive mechanism and whether steps had been taken to ensure he had full access to the information required for the effective investigation of alleged cases of torture or ill-treatment. Noting the delays in the processing of asylum applications, he wished to know whether efforts would be made to strengthen the capacity of the Asylum Division and document the deprivation of liberty of persons held at Belgrade International Airport. He also requested information on the measures taken by the State party to ensure that applications for asylum by persons from States, to which the concepts of "safe country of origin" and "safe third countries" applied, were examined with due consideration for the applicant's personal situation and in full conformity with the provisions of article 3 of the Convention. Similarly, he enquired as to whether action would be taken to ensure that cases of trafficking in persons were properly investigated, prosecuted and punished without undue delay and legislation was implemented to prevent the prosecution of victims for offences linked to trafficking. He also asked whether the State party intended to train labour inspectors in the identification of trafficking victims and increase the amount of funding provided to NGOs and shelters that supported victims.

19. In regard to reports of overcrowding in places of detention, he requested updated information on the occupancy rate of all prisons, including the amount of space in terms of square metres provided for each detainee. He also wished to know what measures had been adopted to address the acute shortage of health-care personnel and the lack of mental health-care provision in prison establishments. In addition, he asked about the frequency of

inter-prisoner violence, including any cases involving possible negligence on the part of the law enforcement personnel, and the number of complaints made in that connection. What preventive measures had been taken to reduce incidences of that nature? Lastly, he wished to know how many complaints of torture against detainees in high security units had been investigated, prosecuted and appropriately punished and what changes had been made to the functioning of such units as a result.

20. **Ms. Pradhan-Malla** asked what steps had been taken to ensure that information regarding the prohibition of torture had been fully included in the training of law enforcement personnel and whether such training was gender-sensitive and conducted on a regular basis. She also requested detailed updated statistical data, disaggregated by crime committed, age, sex and ethnicity, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as on reported deaths in custody according to place of detention, sex, age, ethnicity of the deceased and cause of death. Information on the results of the investigations in respect of those deaths and measures implemented to prevent suicides and other sudden deaths in detention centres would also be welcome. What action had been taken to address the disproportionately high number of deaths and suicides of women detainees in prisons and psychiatric hospitals and establish women-friendly prisons?

21. Noting the high number of persons with disabilities and older persons in institutions, she asked whether there were plans to increase the amount of support available to enable those persons to live independently in the community. She also wished to know what steps had been taken to investigate, prosecute and sanction war crimes and past human rights violations and address deficiencies in the witness protection system. Lastly, she wished to know what measures had been implemented to provide compensation and rehabilitation for victims of torture and ill-treatment, and would appreciate information on the amount of national budget allocated to such reparation efforts.

22. **Mr. Bruni** asked what initiatives had been introduced to tackle the high occupancy levels and poor conditions of police holding cells and increase the health-care resources available in prisons, in the light of the recommendations made by the Ombudsman in his 2013 report and by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its visit to Serbia in November 2007.

23. **Ms. Belmir** asked whether the judicial police received regular, up-to-date training on the provisions of the Convention. She also wished to know what steps had been taken to appropriately investigate, prosecute and sanction law enforcement officers found guilty of torture or ill-treatment, and particularly of offences against vulnerable groups of the population. In that connection, she enquired as to the efforts made to protect and guarantee the rights of vulnerable persons deprived of their liberty, notably members of the Roma community, women, persons with intellectual and psychosocial disabilities and children. Lastly, she asked what action would be taken by the State party to strengthen its cooperation with the International Criminal Tribunal for the Former Yugoslavia, including by tracking down and handing over the two remaining indictees, Ratko Mladić and Goran Hadžić.

24. **Mr. Domah**, commending the State party on the inclusion of two judges in its delegation, said he would welcome information on the composition of the High Council of the Judiciary, the grounds that the disciplinary bodies appointed by the Council used to decide when to take disciplinary action, whether there was a code of conduct for the judiciary and whether any related sanctions had been imposed in the recent period. In the context of the training provided by the Judicial Academy, it would be interesting to know whether there was a mandatory professional development programme, if judges were trained to take decisions on allegations of torture and to whom such allegations could be made. The training course on the Convention was worthy of note, but had been held only

once. Had it been repeated and was any regular training offered, particularly for new appointees? Although the Academy came under the aegis of the Ministry of Education, it was important that the content of its curricula should be decided by the head of the judiciary, not the executive powers. Finally, he would like to know how many judicial investigations and subsequent prosecutions had been carried out into deaths in custody.

25. **Mr. Modvig** said that the fact that the prison health-care system reported to the Ministry of Justice presented some ethical dilemmas. He asked what had been done to implement the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that the Ministry of Health should take a more active role in ensuring quality control of prison health care. With reference to the United Nations Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that concerned the obligation on medical professionals not to engage in torture or ill-treatment even passively, were medical staff given training and information on that issue and had sanctions been imposed for breaches of those standards? He asked whether the medical examination on a detainee's entry into prison was conducted without the presence of police or prison officers, medical confidentiality was ensured, to whom doctors should report any allegations or signs of torture and how many such cases had been reported during the period in question.

26. **Ms. Gaer** said she would welcome information on the discovery in 2013 of a mass grave in Rudnica, which would be the first case to be prosecuted in the national courts. NGOs had expressed concern that the State party had not opened up archives that might provide assistance in locating other such graves, even for the War Crimes Prosecutor; she would like to know whether the archives were now open, whether anyone had been charged with concealment and what, in light of the fact that 12,000 persons were still missing since the 1999–2002 conflict, the State party planned to do to respond to the accusations of inaction on its part.

27. Reports stated that the number of murders of women was increasing, with no commensurate action being taken, and the high proportion of suspended sentences imposed when prosecutions did occur might indicate that the State party was not taking the matter seriously. She would be interested to know what emergency protection measures were available to women under threat. Furthermore, the table showing the sources of information on domestic violence indicated that a large percentage of the tip-offs concerning child victims came from the Ministry of Internal Affairs; it would be interesting to know whether the sources were police officers.

28. **Mr. Zhang** said that he would welcome the delegation's comments on reports that, given the scale of the crimes allegedly committed by Serbian forces during the conflict in the 1990s, the number of domestic prosecutions for war crimes was extremely limited; that protected witnesses had been ill-treated by the Witness Protection Unit; and that the State party had failed to guarantee the enforceable right to reparations. In that connection, were international conventions and other instruments being faithfully fulfilled in Serbia? It would be helpful to have updated information on the claims for redress for non-pecuniary damage from victims of torture or from their families, and examples of redress being awarded in the absence of a judgement, penal sanction or disciplinary measure against the perpetrator.

29. **Mr. Gaye** said he would like clarification on the right of detainees to request an independent medical examination on entry to a prison; did it mean that the detainee could freely choose the doctor? Since the programme to combat trafficking had ended in 2009, he thought it likely that a new programme was being developed, but it would be helpful to know whether an evaluation of the previous one had been conducted. With reference to asylum requests, the concepts of "safe country of origin" and "safe third countries" and

diplomatic assurances, he enquired how the State party fulfilled its obligation under article 3 of the Convention to consider each case individually in order to ensure that a person was not returned to a country where torture was a risk. The delegation should explain the mention in the table in paragraph 51 of the periodic report, under repatriation, extradition and expulsion of asylum seekers, concerning cases of "residence permit revoked", as presumably such permits could only be revoked after a definitive decision had been taken in each case.

30. **The Chairperson** said he welcomed the signing by Serbia of a memorandum of cooperation with the Mental Disability Rights Initiative and wondered to what extent it had been implemented. Additional information on the damages awarded to victims of torture would be helpful, as would clarification, with statistics, on when the appointment of a defence counsel was optional. The reference to the article of the Criminal Procedure Code that guaranteed interpretation services to persons deprived of liberty appeared to be incorrect; clarification would be appreciated. It would be useful to know whether Serbia had any bilateral or regional agreements on trafficking in persons and whether any asylum seekers were being held in detention and for what reason.

31. The translation of brochures for detainees into the Romani language was a welcome development; it would be interesting to know how many copies had been made available. There were reports of discrimination against Roma persons in Serbia, with some being denied access to an emergency reception centre in Belgrade during the floods in May 2014 and others still living in inadequate metal containers because of delays in resettlement programmes; explanations of those cases would be appreciated. Further information, with details of immediate measures adopted, would be appreciated on action taken in the case of the attack on a participant at an international conference on lesbian, gay, bisexual, transgender and intersex rights, as would updated information on cases brought against public officers on allegations of torture, the appellate proceedings related to the death of the person referred to as M.P. in a correctional institution in 2005, the progress of charges brought by the Public Prosecutor in Novi Pazar on 26 June 2009 that had been referred back to the court of first instance for retrial, and any cases of torture or ill-treatment of persons with disabilities in social protection institutions. Information had been received that amendments were to be made to the Criminal Procedure Code to allow the public prosecutor to decide not to proceed to investigations in cases of ill-treatment and torture, but rather to institute summary proceedings; had that provision been applied? It was also unclear whether, in cases where the prosecutor rejected the criminal report, the injured party could challenge the decision in court, given the changes to the Code of Criminal Procedure preventing such a party from becoming a subsidiary prosecutor.

32. **Mr. Tugushi** said he would like to know why, since alternatives to pretrial detention were now available, many persons were still being held in custody. Information would also be appreciated on progress made with reintegrating children with disabilities and persons with mental health issues into the community, as the numbers held in specialized institutions were still very high.

33. **Ms. Pradhan-Malla** said that she would like information on the protection measures that existed for human rights defenders and clarification on the restraints used on persons who had attempted to commit suicide.

The discussion covered in the summary record ended at noon.

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Committee against Torture
Fifty-fourth session

Summary record of the 1305th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 29 April 2015, at 3 p.m.

Chairperson: Mr. Grossman

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Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Sixth periodic report of Spain (continued)

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Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Sixth periodic report of Spain (continued) (CAT/C/ESP/6; CAT/C/ESP/Q/6; HRI/CORE/ESP/2010)

1. *At the invitation of the Chairperson, the delegation of Spain took places at the Committee table.*

2. **The Chairperson** invited the members of the delegation of Spain to reply to the questions put by Committee members at the 1302nd meeting.

3. **Mr. Acón Ortego** (Spain), referring to the discussion of "public official" and "intimidation or coercion" in the State party's report (CAT/C/ESP/6), said that the definition of "public official" in Spanish law was broad and covered anyone carrying out official duties, and the definitions of "intimidation or coercion" and of torture were already sufficient to cover any conduct that might be deemed coercive torture. That was why the concepts of intimidation and coercion were not specifically included in the definition of torture.

4. When it constituted an act of gender violence, an isolated act of torture could be punished: there was no requirement that the behaviour should be habitual. The gender element constituted an aggravating circumstance.

5. The concept of torture in Spanish law was broader than the definition under article 1 of the Convention insofar as it did not require the infliction of "severe" pain or suffering. All acts of torture were deemed serious offences: the penalty handed down was determined by the degree of severity of the act.

6. Two Supreme Court judgements were relevant: No. 601/2013, which demonstrated the scope of the definition of torture in Spanish law, and No. 774/2007, illustrating the application of the criterion of severity in sentencing practice.

7. A further example of judicial practice was the conviction for torture, in 2012, of a man who was now serving a prison term of 1 year, 6 months. It was to be noted that the person had been performing official duties on contract — and therefore, crucially, was not a public official per se, which showed the scope of the definition of "public official" — and that the sentence had not been suspended as it could have been, reflecting the seriousness with which the courts viewed the offence of torture.

8. Torture was not subject to the statute of limitations unless it was deemed a crime against humanity.

9. The amended Criminal Code was due to enter into force on 1 July 2015. It introduced new protections for victims of gender violence and racism, among other things, and also defined a new offence of enforced disappearance.

10. Referring to paragraph 40 of the list of issues, regarding civil detention, he said that the Constitutional Court had found the current legislation unconstitutional insofar as it took the form of an ordinary act of law, whereas what was required was a law with the rank of organic act. The legislation would accordingly be amended and in fact would ultimately be incorporated into the amended Civil Proceedings Act.

11. A reform of the judiciary was planned. The draft organic act on the judiciary included, among other improvements to the judicial system, the requirement for forensic physicians to have a special qualification in forensic medicine. In that connection, he said that the provision in the Government's Human Rights Plan to permit the ex officio appointment of a second doctor to conduct an independent examination of an

incommunicado prisoner had not been implemented. However, a second doctor could be designated by a prisoner, even a prisoner being held incommunicado.

12. **Mr. León Cavero** (Spain) said that the Convention formed part of the Spanish legal order and was directly applicable in the courts. In addition, the Constitution provided that all legislation governing constitutional rights and freedoms was to be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties ratified by Spain.

13. Numerous court rulings had granted protection to persons seeking a thorough investigation into allegations of torture, and the Constitutional Court had ruled that courts were to take special care to thoroughly investigate all such allegations and not close any case until all relevant evidence had been examined. Recent Constitutional Court judgements had made exhaustive reference to international human rights instruments as a basis for protecting individuals against torture.

14. As to extradition and diplomatic assurances, he said that under Spanish law extradition would not be granted if the requesting State failed to provide the relevant guarantees against execution or torture. That applied equally to the refoulement of asylum seekers. The second phase of the extradition procedure was a judicial procedure and the Constitutional Court had declared article 3 of the Convention binding on all Spanish courts. Even where the requesting State was a democratic one and had given the relevant assurances, extradition would still be denied if it was clear that there was a risk to the person's life or physical integrity.

15. As to victims' rights, he said that article 14 of the Convention was fully applicable. Spanish law provided for full protection for the rights of victims of any kind of violent crime and, in addition, for proper reparation to be made where harm resulted from acts of the administration. That legislation had been found to be effective by the European Court of Human Rights. Moreover, Spain always made immediate settlement whenever the European Court of Human Rights itself ordered compensation to be made.

16. **Ms. Martínez Arrieta** (Spain) said that the pardon was a measure of clemency granted at the Government's discretion. It extinguished, in part or in full, the individual's criminal liability, but did not affect the offence committed or the convicted person's guilt or civil liability. The granting of pardons to officers of the Mossos d'Esquadra in a torture case in 2012 had been an exception, but the provisions on pardons had been reviewed and a senior Ministry of Justice official would now be required to inform Congress on the granting of pardons.

17. All the Ombudsman's recommendations on issues of criminal procedure had been adopted. European Union directives 2010/64/EU, on the right to interpretation and translation in criminal proceedings, and 2012/13/EU, on the right to information in criminal proceedings, had been transposed into the Criminal Procedure Act, and a further amendment to the Act had been drafted to strengthen procedural guarantees and regulate the use of technology in investigations.

18. She said that incommunicado detention was an exceptional measure, as mentioned in the State party's report. In the criminal procedure reform process it had been decided not to abolish the possibility of restricting the detainee's right to communicate with others, but to introduce stricter safeguards. Thus, whereas under the current provision basic rights were automatically suspended when a person was held incommunicado, the revised text would instead make the suspension of some or all of those rights a discretionary measure to be decided by the court. As to minors being held in incommunicado detention, additional protections had been introduced into the legislation on minors' criminal responsibility.

19. More generally, persons deprived of liberty now had the right to contact a lawyer within a maximum of three hours rather than eight hours as previously, and the right to receive information in writing on the charges against them. Detainees were now permitted to speak in private with a lawyer both before and after making a statement.

20. The new law on the status of victims of crime covered both direct and indirect victims and made explicit reference to victims of torture. It gave all such victims special rights in criminal proceedings and enabled the victims of torture to seek special protection against anyone who might represent a danger to them on their release.

21. **Mr. Rueda Jiménez** (Spain) said that a new database of statistics on police malpractice had been created as the Committee had recommended. Torture statistics were collected separately. It was clear from the statistics gathered that the training now being given to the police was bearing fruit, since the number of complaints had declined by over 50 per cent during the past three years.

22. Video recording equipment had now been installed in two thirds of police custody units, and inspections being carried out under the Ministry of the Interior were assisting the process of standardization of the infrastructure in police stations.

23. The number of suicides in prisons had dropped sharply over the past seven years and the level was now below the European average. A suicide prevention programme introduced in March 2014 emphasized staff training, proactive intervention and coordination between the relevant services.

24. The prison population had fallen by 9,000 in four years, not least owing to the increased use of alternative non-custodial measures, of which over 144,000 had been ordered by the courts in 2014, as compared with 800 in 2000.

25. In Spain, prisoners were not categorized by region of origin. In addition, there were many prisoners born in the Basque Country who had nothing to do with Euskadi Ta Askatasuna (ETA), and since the Basque people themselves were the primary victims of that group's campaign of terror, the term used by Mr. Gaye, "Basque prisoners", struck the delegation of Spain as somewhat regrettable. Perhaps Mr. Gaye had been referring to terrorists who had been given prison sentences for belonging to or assisting ETA, not all of whom were Basque. In any event, the authorities held ETA and other terrorists in prisons dispersed throughout the country in an attempt to favour the prisoners' reintegration and break their ties to the criminal organization. The tactic was fully compliant with the Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders.

26. Only a coordinated international response would grant legitimacy to the initiatives that would have to be taken in the area of immigration. Ceuta and Melilla, for their part, were facing unprecedented migratory pressure, which sometimes led to violence, particularly when large numbers of would-be migrants stormed the borders. The migrant appearing in a video recording of an incident referred to by Mr. Gaye had turned out to be unharmed. Six members of the Civil Guard had been injured, however, one of them seriously. There was no knowledge of any further incident in April 2014. The events on El Tarajal Beach in 2014 were the subject of a judicial investigation that was still under way.

27. Since 2013, crowd control had been the responsibility of police units whose members wore highly visible identification on their body armour. In 2013, riot control weapons had been used in only about 20 of the more than 6,000 demonstrations that had been held in the country. No bill was being drafted that would lead to the detention of journalists who interfered with the law enforcement authorities. What the Spanish parliament had passed was a law, set to enter into force on 1 July 2015, that would penalize

the malicious diffusion of images of the members of the law enforcement and security forces.

28. **Mr. Palomo del Arco** (Spain) said that all the country's courts required that evidence should be obtained lawfully. The requirement that it should be submitted in oral proceedings was an initial safeguard against the admission of statements made outside the courts. Precedent had made it entirely clear that confessions obtained in police facilities could not be used in court. In one instance, the Supreme Court had even overturned a guilty verdict not because it had found that the evidence for the verdict returned by the lower court had been obtained under torture, but because there had been indications that it could have been thus obtained. The country's highest courts, including the Constitutional Court, had consistently ruled that incriminating statements made in incommunicado detention and under torture were inadmissible. They had also ruled that evidence obtained through any form of coercion, including pressuring defendants to cooperate with the investigating authorities or face legal consequences detrimental to their interests, would not be taken into consideration.

29. **Ms. Guajardo** (Spain), replying to a question about allegations that the Public Prosecution Service did not support persons who reported torture or ill-treatment or take an active role in investigating those reports, said that in the Spanish judicial system the role of the Public Prosecution Service was not to act as lead investigator. Complaints could nonetheless be submitted to the Service, which would then undertake preliminary investigations to determine whether there was sufficient evidence to bring an action before the courts. The Public Prosecution Service was highly responsive to the victims of any crime, and for that reason it had a specialized prosecutor for victims' rights with assistants in each of the Service's provincial offices. In 2011, a post had been created for a specialized prosecutor for equal treatment and against discrimination, in part to combat what was commonly referred to as hate crime. Statistical information on offences that fell within the scope of the Convention, broken down by category of offence and type of legal proceeding, was available on the Public Prosecution Service's website.

30. The prosecutor responsible for the case of a woman who had been wounded by a rubber bullet allegedly fired by a member of the riot police during a demonstration in Madrid had sent three reports detailing the evidence that had been gathered to the Ombudsman. She offered to provide the prosecutor's reports to the Committee. The investigation of the case of Ester Quintana, who had lost an eye to a rubber bullet fired during a demonstration in Barcelona had recently concluded, and the prosecutor would very shortly be filing charges.

31. The Constitutional Court had often granted applications for *amparo* filed by the Public Prosecution Service, some of which had related to persons held in incommunicado detention. In its 2013 annual report, the Public Prosecution Service had proposed that the provisions for incommunicado detention included in the Act on the criminal responsibility of minors should be repealed. In any event, since 2007, the Service had consistently denied requests from law enforcement authorities to place minors in incommunicado detention.

32. **Mr. Coria Rico** (Spain) said that the delegation welcomed Mr. Gaye's remarks on racial profiling and circular No. 2/2012, which had clarified an earlier circular regarding identity checks. Article 16 of Organization Act No. 4/2015, set to enter into force on 5 July 2015, stated that identity checks must respect the principle of proportionality, equal treatment and non-discrimination. When migrant women in an irregular situation reported abuse, any expulsion proceedings that had been initiated against them were suspended. In recent years, more than 70 per cent of the applications for residence and work permits on the grounds of gender-based violence had been accepted. In accordance with Spanish law and article 3 of the Convention, asylum seekers were not returned or expelled until their

cases had been resolved. An expedited procedure, including free legal aid, applied to those who sought asylum at border crossings or in holding facilities for foreign nationals.

33. **Ms. Sosa Erdozain** (Spain) said that the identification of victims of torture was made possible by the joint efforts of the Ministry of the Interior and the Ministry of Employment and Social Security. While their applications were being examined, asylum seekers could receive services at reception centres that belonged either to the General Secretariat for Immigration and Emigration or to subsidized NGOs and were staffed by specialists in a number of relevant fields. In addition to their academic preparation, those specialists had received specific training on working with asylum seekers who were victims of torture and on documenting evidence of torture and other cruel, inhuman or degrading treatment or punishment. Review of applications for asylum took the diagnoses produced by those specialists into consideration, and the officials responsible for reviewing them had taken part in a workshop on the Istanbul Protocol. Lastly, she said that there were no data on the number of asylum seekers who had been victims of torture or were at risk of being tortured. Spain, following guidelines issued by Eurostat and the European Asylum Support Office, kept records only of such aspects as the nationality and number of asylum seekers.

34. **The Chairperson** (Country Rapporteur) asked what penalties an offence classed as an assault on freedom would incur and what the applicable statute of limitations would be. He took it that the Convention was directly applicable in the Spanish legal system and wondered whether the delegation could provide examples of any legal cases in which an article of the Convention other than article 12 had been referred to. Information on the Spanish authorities' views of the obligations of States parties to undertake investigations or extraditions would be especially welcome. He requested additional data on the number and outcomes of investigations of alleged cases of torture, at least one of which had led to what appeared to be a very lenient prison sentence.

35. In connection with enforced disappearances, he asked whether Spain had incorporated the notion of an ongoing offence into its domestic law. He wished to know what Spain had done when diplomatic assurances received from a State to which it had expelled a non-national had not been honoured. What exactly had those assurances consisted of?

36. He welcomed the initiative to expand video recording efforts to all the country's detention facilities but wondered why it did not include migrant holding centres in Ceuta and Melilla. Amnesty International had reported that it had been denied access to those centres. Regarding the Public Prosecution Service and without intending to cast doubt on the importance of its role, he asked what had been done to identify suspected perpetrators of violence within the ranks of the law enforcement and security forces. Lastly, he voiced concern that a law prohibiting the "malicious diffusion" of an image could be interpreted so broadly as to prevent journalists from doing their job.

37. **Mr. Gaye** (Country Rapporteur), referring to paragraph 37 of the list of issues concerning compensation for victims of torture and ill-treatment, said that the delegation had supplied information concerning compensation pursuant to a decision by the European Court of Human Rights but had failed to provide statistical data on the domestic compensation system.

38. Statistical data from the National Human Rights Plan concerning complaints of police misconduct had been provided in the annexes to the report. However, additional information concerning convictions and sentences for torture or ill-treatment was required.

39. He was pleased to hear that an investigation had been ordered into the tear-gas injuries suffered by migrants in Melilla in April 2014.

40. He had asked the delegation to provide examples of legal proceedings in Spanish courts based on the Constitutional Court's directive concerning complaints of ill-treatment by law enforcement officers.

41. He welcomed the fact that enforced disappearance had now been recognized as a criminal offence. However, the Committee had received complaints concerning the lack of State support for people searching for the remains of loved ones who had disappeared during the Civil War and the Franco dictatorship.

42. **Mr. Bruni** said that he had requested information concerning the recent imposition of solitary confinement as a disciplinary sanction in prisons for periods that exceeded the statutory 14-day limit. He had also asked whether the adverse impact on the health of detainees was taken into consideration in such cases.

43. **Mr. Modvig** welcomed the use of the Istanbul Protocol to identify torture victims among asylum seekers. The report, however, mentioned only three cases in which investigations to assess applicants' physical and psychological state had been conducted. He asked whether Spain applied or intended to apply the so-called "hot expulsion" procedure and, if so, how it could ensure that torture victims were identified.

44. He repeated his question regarding the State party's response to the 292 reported cases of torture and ill-treatment by law enforcement officers between 2009 and 2012.

45. Referring to the principle of universal jurisdiction, he said that the Committee had been informed that Spain was reluctant to transfer Spanish nationals who were alleged perpetrators of human rights violations, including torture, to Argentina.

46. **Ms. Belmir**, noting that tasers were used in Spain, said that the Committee was opposed to the use of such weapons by law enforcement officers because of the threat they posed to the health and lives of the persons targeted.

47. **Mr. Domah** welcomed the State party's intention to consider alternatives to pretrial custody. He asked whether existing laws would be amended to ensure that such custody remained the exception rather than the rule. He also wished to know whether there had been any court decisions regarding the restricted and exceptional use of incommunicado detention and pretrial custody measures.

48. **The Chairperson** asked whether the arbitrary use of force, particularly by law enforcement officers, had been defined as a criminal offence.

The meeting was suspended at 5.20 p.m. and resumed at 5.25 p.m.

49. **Ms. Cruz Fajardo** (Spain) said that the temporary migrant accommodation centres in Ceuta and Melilla were not detention centres but open facilities that provided services such as accommodation, clothing, and medical, legal and psychological assistance. The Ministry of Employment had introduced major improvements with European Union assistance in 2014, increasing the staff and enhancing the services and basic facilities.

50. The centres were regularly visited by representatives of national and international human rights bodies. They had been visited in 2013 by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and in 2014 and 2015 by representatives of, inter alia, the Office of the United Nations High Commissioner for Refugees, the World Health Organization, the European Committee for the Prevention of Torture and Amnesty International.

51. With regard to requests by women resident in the centres for voluntary termination of pregnancy, prior to 2010 abortion had been legally permissible only in cases of rape. Under more recent legislation, however, it was permissible in all cases during the first 14

weeks of pregnancy and until the twenty-second week if there was a serious risk to the woman's life or health or in the event of serious foetal abnormalities.

52. **Mr. García Jiménez** (Spain) said that, as of December 2014, there had been 40 centres for women victims of trafficking for sexual exploitation. They were located in 14 Autonomous Communities and could accommodate 354 women. There were also 120 outpatient centres in 16 Autonomous Communities. The Ministry of Health, Social Services and Equality had allocated €1.5 million to such projects in 2014 and €2 million in 2015. The project staff had contacted 34,688 women who were at risk of trafficking by means of mobile units, telephone lines and visits in 2013.

53. The Ministry subsidized, as a matter of priority, programmes providing comprehensive care for victims, awareness-raising and training programmes for professionals, and the creation of support networks.

54. Police and operational plans to combat trafficking for sexual exploitation had been submitted in April 2013. A total of 462 operations had been conducted under the plans by December 2014; 1,450 persons had been arrested; and 11,751 potential victims had been detected.

55. **Ms. Díaz Bernárdez** (Spain) said that the regulatory procedures applicable in centres for minors with behavioural or social problems guaranteed the right of the minors concerned to lodge complaints. Three bodies were responsible for monitoring compliance with their rights: the public entity for the protection of minors; the Public Prosecution Service, Minors Branch; and the Ombudsman's Office.

56. Comprehensive and disaggregated data concerning the centres were not currently available. However, she would inform the Spanish authorities of the Committee's interest in obtaining such data.

57. The Parliament was considering a draft organic law that contained a section dealing with centres for minors with behavioural or social problems. It would regulate confinement measures, medical care and minors' right to file confidential complaints with the Public Prosecution Service, the competent judicial authority and the Ombudsman.

58. With regard to the *Ali Aarrass v. Morocco* case, the Moroccan and Spanish authorities were taking joint action to implement the Committee's decision. Meetings concerning the conditions of detention of Mr. Ali Aarrass and the investigations into allegations of torture and ill-treatment had been held in 2014 with the Chairman of the Moroccan National Human Rights Council and the Chief of the Human Rights Division of the Moroccan Ministry of Foreign Affairs, and in February 2015 with the Chief Judge of the Special Criminal Issues Division of the Moroccan Ministry of Justice.

59. With regard to the *Achabal Puertas v. Spain* case, Ms. Achabal Puertas had received free assistance from the public health-care services. The Views of the Human Rights Committee had been widely disseminated and steps had been taken to reform the incommunicado detention system.

60. **Mr. León Cavero** (Spain) said that the Supreme Court had recently granted Alexandr Pavlov asylum in Spain.

61. Spain had complied with the ruling of the European Court of Human Rights in the case of *Del Río Prada v. Spain*.

62. With regard to paragraph 37 of the list of issues concerning compensation for victims of torture and ill-treatment, he assured the Committee that the Spanish justice system fully complied with that requirement. The State frequently paid compensation to victims in advance pending reimbursement by the guilty party.

63. **Mr. Acón Ortego** (Spain) said that prison sentences of 5 or 6 years could be handed down for acts of torture or ill-treatment by public officials. The statute of limitations depended on the seriousness of the crime. The maximum period under the Criminal Code was 15 years.

64. The definition of torture under article 174 of the Criminal Code was in line with article 1 of the Convention and actually offered enhanced protection, since it stated that acts causing any form of suffering, whether physical or mental, constituted torture. Many persons had been convicted under that article.

65. **Mr. Palomo del Arco** (Spain) said that 14 days was the period legally prescribed for solitary confinement. However, three successive 14-day sanctions had been declared constitutional. Prior authorization by the penitentiary judge was required for any extension beyond 40 days and a daily medical examination was obligatory.

66. Spain had drawn a distinction between torture and degrading treatment, basically in light of the perpetrator's motivation. There were far more convictions for degrading treatment than for torture.

67. The statute of limitations was not applicable to enforced disappearances unless the person concerned was found.

68. The obligation to extradite or prosecute was set forth in article 23, paragraph 4, of Organic Act No. 6/1985 on the Judiciary.

69. **Ms. Sosa Erdozain** (Spain) said that the three cases mentioned in the report in which asylum seekers had been examined to assess whether they had been tortured was not an exhaustive list. She was unfortunately unable to provide comprehensive statistical data. Asylum offices had been opened in Ceuta and Melilla in November 2014 to facilitate access to the asylum procedure.

70. **Mr. Rueda Jiménez** (Spain) said that two local law enforcement officers had been convicted of torture and sentenced to 3 years' imprisonment in February 2015.

71. **Ms. Cruz Fajardo** (Spain) said that the Public Prosecution Service was required under the Constitution to conduct effective investigations whenever it received reliable information concerning the use of violence by law enforcement officers. There must, however, be a reasonable suspicion that violence, ill-treatment or torture had occurred.

The meeting rose at 6 p.m.

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Fifty-fourth session

Summary record of the 1306th meeting
Held at the Palais Wilson, Geneva, on Thursday, 30 April 2015, at 10 a.m.

Chairperson: Mr. Grossman

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Fifth periodic report of Colombia (CAT/C/COL/5; CAT/C/COL/Q/5; HRI/CORE/1/Add.56/Rev.1)

1. *At the invitation of the Chairperson, the delegation of Colombia took places at the Committee table.*

2. **Ms. Abadía Cubillos** (Colombia), introducing her country's fifth periodic report (CAT/C/COL/5), said that Colombia had changed greatly over the past four years and that considerable efforts had been made to put an end to the half century of internal armed conflict. Her Government was firmly committed to the Convention and had introduced regular training programmes on the prohibition of torture for law enforcement personnel and State officials and wide-ranging legislative provisions to protect the right to life and physical integrity of its citizens. It had also adopted a series of measures to identify and investigate cases of torture and provide appropriate support and redress for victims, including the adoption of the Victims and Land Restitution Act which to date had provided reparations for around 500,000 victims of the internal armed conflict. In addition, there had been a number of legislative initiatives designed to improve access to justice and conditions of detention as part of ongoing efforts to strengthen the judicial and prison systems, notably Act No. 1709 of 2014 establishing the Prison Monitoring Commission and the introduction of the National Health Fund for Persons Deprived of their Liberty. In addition, the budget allocated to the judicial branch in 2014 had been increased by more than 25 per cent in comparison to previous years. The Ministry of Justice and the Attorney General had drafted a bill to limit the use of pretrial detention which they had put before parliament in October 2014 and a set of guidelines had been developed to ensure that the human rights of persons deprived of their liberty were upheld. Between 2013 and 2014, the Government had invested some US$ 118 million to strengthen the national prison system and provide an additional 11,350 prison places. The Attorney General's Office had also been restructured pursuant to Act No. 1654 of 2013 so as to enhance its capacity and ensure that it could discharge its legal and constitutional functions effectively. Some 1.85 billion pesos had been invested between 2014 and 2016 in order to create 3,500 additional prosecutor and criminal police posts. Efforts had also been made to strengthen the work of the Institute of Forensic Medicine and promote the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (the Minnesota Protocol) for suspected cases of torture and ill-treatment. The talks in Havana aimed at ending the decades-long internal armed conflict represented an important step towards peace. The National Development Plan aimed to promote peace, equality and education and to provide comprehensive protection of the nights of all citizens, including the most vulnerable members of society.

3. **Mr. Modvig** (Country Rapporteur), noting the two different definitions of torture in the Criminal Code, asked how many convictions for torture had been handed down during the reporting period and what type of punishments had been imposed. He also wished to know whether there was a statute of limitations for the offence of torture in national legislation and the degree to which cruel, inhuman or degrading treatment was defined as an offence under the Criminal Code. Noting that the right of detainees to communicate with their relatives and their lawyer was regulated by the internal rules of each prison facility as well as in accordance with their security category, he requested clarification on whether such rules applied to persons held in police custody, whether all persons deprived of their

liberty had the right to be examined by an independent doctor upon request, and whether police officers and prison guards afforded those basic rights to detainees.

4. He expressed concern at the Government's recent decision to define demonstrations as an offence and requested information on the number of arrests made in that connection during the reporting period as well as the means of force used by law enforcement officers pursuant to the guidelines on preventive detention. As to the endemic levels of sexual violence against women and children, he asked what steps had been taken to prevent children performing informal functions for armed groups which resulted in their ill-treatment or abuse and to protect vulnerable victims of the internal armed conflict and internal displacement. He also wished to know what protection was provided to the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in the light of the high number of attacks and acts of torture committed against them.

5. In relation to the national prison system, he asked what steps had been taken to address the concerns voiced by the Constitutional Court and numerous international bodies regarding the dire conditions of detention, severe levels of overcrowding and lack of access to health-care facilities. In particular, he wished to know what measures had been adopted to provide separate detention facilities for women detainees. He also requested further information on the number and causes of deaths of detainees and the procedures in place for independently investigating those deaths. In addition, he wished to know what medical examinations were conducted before detainees with psychosocial disabilities were placed in punishment cells or solitary confinement and whether the State party collected data on the use of those forms of imprisonment. In that connection, he enquired what efforts had been made to address the limited access of detainees to independent complaints mechanisms. He also asked whether the State party intended to ratify the Optional Protocol to the Convention against Torture and recognize the Committee's competence to receive individual complaints pursuant to article 22 of the Convention. In regard to the Early Warning System, he requested additional information on the number and type of human rights violations identified by the system and the outcome of the investigations into those cases. He also asked why the number of persons in need of extraordinary protection had doubled from 2012 to 2013 and whether there were links between that system and the system responsible for investigating offences through the Attorney General's Office.

6. As to reports of mass arrests by the military, he requested further information on the criteria for involving the military in criminal cases and on the justification for doing so in each case of mass arrest. He also wished to know whether military officers had received training on the prohibition of torture and the basic safeguards that should be made available to all persons deprived of their liberty. The delegation's comments on claims that the military had arbitrarily detained young men and forcibly conscripted them into the army would also be appreciated. In respect of enforced disappearance, he asked how many cases had been identified, prosecuted and punished and what steps had been taken to eradicate the practice. He stressed that the widespread pattern of extrajudicial killings of civilians, which had subsequently been described by the security forces as combat casualties, could also be considered as a form of enforced disappearance and questioned the delay in implementing Act No. 1408 to Respect, Locate and Identify Victims of Enforced Disappearance adopted in 2010. He also requested clarification on the figures presented in the report regarding the National Protection Unit's urgent search mechanism performance and on the number and duration of protective measures granted to relatives of disappeared persons. In respect of illegal armed groups, he wished to know what steps had been taken to tackle de facto impunity and bring members of demobilized paramilitaries to justice for the commission of acts of torture. He also asked what measures had been adopted to provide effective protection against reprisals and threats for judges and whether data were collected on the type and frequency of threats directed against them.

7. Concerning the high rate of sexual violence in Colombia, he asked whether national prevention measures had been established to reduce ill-treatment and abuse directed against particularly vulnerable groups of society, such as women and children, and whether redress and compensation were provided on a systematic basis to victims. In particular, he would like further information on the specific goals of the Life Free from Violence programme and specifically whether all forms of gender-based violence against women would be included. As to the database established by the Attorney General's Office on cases of sexual violence in the context of the armed conflict, he wished to know how many cases had been reported per year and how many cases had subsequently been investigated, prosecuted and punished. In relation to human trafficking, he asked whether the number of reported cases accurately reflected the scale of the issue in the State party and whether the State party intended to improve human trafficking and reporting mechanisms and guarantee prompt and impartial investigations into all cases.

8. **Ms. Belmir** (Country Rapporteur) asked what training had been provided on the prohibition of torture and the provisions of the Convention for judges and magistrates. She also wished to know what steps had been taken to monitor the training provided to police officers and ensure that all law enforcement personnel, civil or military, medical personnel, public officials and other persons involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment were fully aware of the Istanbul Protocol. The delegation's comments on alleged mass arrests by the military and substandard detention conditions in prisons would also be welcome. Similarly, she requested further information on the number of investigations into cases of torture as well as the number of prosecutions, convictions and punishments. Noting the alleged interference in ordinary criminal cases by military courts, she asked what steps had been taken to ensure the independence of the criminal courts and to ensure that military courts ruled solely on military cases. As to extrajudicial killings of civilians committed by demobilized paramilitary groups, she wished to know what efforts the State party had made to conduct independent investigations into the killings and punish the perpetrators.

9. She would appreciate reassurance from the delegation that the High Council of the Judiciary would be allowed to play its role and would not be abolished. Further information would be welcome on the reports of extreme and sometimes fatal police brutality against demonstrators; inquiries had allegedly not been conducted in many cases, while other cases had resulted in only disciplinary or minimal criminal sanctions. Although information from the State party indicated that the number of complaints submitted alleging torture was decreasing, those figures did not take account of torture committed by illegal armed groups. She asked for clarification on the reports of collusion between those armed groups and the State party authorities in respect of extrajudicial executions, attacks on women, children and minority groups and the recruitment of children. She would welcome an explanation of the reasoning behind the extradition of 18 persons from Colombia to the United States of America for trial for offences committed in Colombia. Further information would also be appreciated on the redress offered to those who had been deprived of their land during the armed conflict.

10. **Mr. Bruni**, noting the Government's efforts between 2011 and 2014 to reduce prison overcrowding, said that information pertaining to January 2015 received from the National Prisons Institute indicated that not enough had yet been done. The system as a whole was over capacity by 50 per cent, with one prison holding nearly three times the number of prisoners it had been built for, and the situation was still deteriorating. The prison employees' union had decided not to allow any new prisoners to be admitted to the country's four biggest prisons. The Constitutional Court had demanded an end to the arbitrary abuse of prisoners and the establishment of respectful conditions by October 2015. He asked what the authorities were planning to do to address the issue and requested further information on conditions in the prisons of Riohacha, Santa Marta, Magangue,

Villahermosa, Caloto, La Paz, Bosque de Baranquilla, Villa Ines and Anayancy. Information would also be welcome on the 1993 bill to remove solitary confinement as a punishment in prisons, which had been awaiting approval in 2013. Lastly, had the Government considered ratifying the Optional Protocol to the Convention against Torture?

11. **Mr. Gaye**, referring to article 303, paragraph 4, of the Code of Criminal Procedure on the right of persons arrested to appoint and to meet with a lawyer of their choice, said that the words "without delay" were not specific enough and should be amended to ensure that detainees had access to a lawyer from the very beginning of their detention. An answer would be appreciated to the question raised in the list of issues prior to reporting regarding the number of cases of refoulement, extradition and expulsion carried out by the State party during the reporting period through the acceptance of diplomatic assurances or the equivalent thereof, as well as an analysis of the State party's fulfilment of the obligation of non-refoulement under article 3 of the Convention. Information would also be welcome on the State party's approach to universal jurisdiction in respect of cases of torture.

12. **Mr. Domah** said that the number of persons held in pretrial detention was alarmingly high. The delegation should explain whether those persons had not been charged, how their human rights were respected during detention and who decided, and on what grounds, that they should be detained. Were objective facts used as the basis to link members of criminal organizations to the commission of serious offences and at what point in the proceedings was that done? He would welcome information on the evidence against the 20 per cent of pretrial detainees who pleaded guilty, particularly whether it consisted of more than the detainee's confession, and what the State party did to protect itself against allegations of torture. More information would also be welcome on the 1994 case that had been dismissed by the courts due to the introduction of evidence or testimony obtained through torture or ill-treatment; were there no other such cases? Lastly, it would be interesting to learn whether any training was provided for officials on their rights and duties under the Convention.

13. **Ms. Gaer** said she would be grateful for information on the special representatives of the prosecutor's office established in military units, including on any oversight mechanism set up to guarantee their independence, and the number of cases and trials that had resulted, as well as their outcomes. Information would also be welcome on the measures taken, including new rules adopted, to guarantee the independence and safety of staff of the human rights units within the public prosecutor's office and whether any claims of pressure being put on them had been investigated. Had any military units been dispatched to ensure the safety of those staff?

14. She would like to know whether the reparations programme for victims addressed the need for holistic services and was available to all victims of torture, regardless of whether they had suffered in the context of the conflict. Reports indicated that human rights defenders were still being targeted, particularly by demobilized military groups; details on the measures adopted to protect human rights defenders and their families, any prosecutions of perpetrators and sanctions taken against officials who had accused the defenders of being enemies of the State should be provided.

15. **Mr. Zhang**, noting that close to half a million members of the Armed Forces had received training in international human rights instruments, said he would appreciate more information on who those trainees were, the methodology that was to be used to investigate human rights violations and the naval officers who were following postgraduate or specialized studies in international humanitarian law. Updated information should be provided on the 1994 case that had been dismissed because of evidence obtained through torture, together with details of the relevant provisions of criminal law.

16. **Ms. Pradhan-Malla** said she would appreciate information on the legal mechanisms set up to deal with the use of acid in attacks on women. In the context of sexual violence, she would like to know whether reparations for victims included the prosecution of perpetrators, what statutory time limits were attached to such crimes and what was being done to improve the poor recording of sexual violence against minors or to address the cultural barriers that discouraged reporting of such crimes. The delegation should also comment on the forced sterilization of persons with disabilities.

17. **Mr. Tugushi** said that trafficking in human beings was still a problem in the State party, particularly among internally displaced persons. It would be useful to learn whether funding was being increased to provide services for and promote identification of victims of trafficking, as well as to cooperate with NGOs in the area. Did the rehabilitation programme for victims of torture comply with the Committee's general comment No. 3, was its approach holistic and was it restricted to victims of the armed conflict?

18. **The Chairperson** said he would appreciate additional information on the case of two Venezuelan nationals who had been expelled to their country of origin because of their political activities in Colombia, raising the issue of compliance with article 3 of the Convention, which required a case-by-case approach to extraditions. The Committee was still receiving reports of threats against and attacks on human rights defenders in the country, as well as sexual violence against women and children, especially in the armed groups, and attacks on, including murders of, LGBTI persons. He asked the delegation to comment on the fact that no consent was required for the sterilization of persons with disabilities. The Constitutional Court had adopted a host of positive judicial decisions but an account of their practical implementation would be useful. The State party should also consider ratifying the Optional Protocol to the Convention. Lastly, he wished to know what the State party was doing to punish the perpetrators of enforced disappearances; while it clearly did not condone such crimes committed by paramilitary groups, it should take action to ensure that they were not repeated and the perpetrators were punished.

19. **Mr. Modvig**, welcoming the extension to the definition of a refugee that had been adopted, said it should, nevertheless, be modified to ensure that all asylum seekers had full access to asylum procedures, with their applications recorded and transmitted to the central authorities. In light of the broad range of victims of torture and ill-treatment, the Government had a particular responsibility to identify victims and provide redress, including rehabilitation. The current Psychosocial Assistance and Comprehensive Health-Care for Victims Programme did not address the physical consequences of torture; programmes should be developed in cooperation with NGOs to provide redress in line with the Committee's general comment No. 3.

20. **Ms. Belmir** said she would be grateful for additional information regarding compensation or the restitution of land for persons, particularly those of Afro-Colombian or indigenous origin, who had been displaced during the armed conflict.

21. **Ms. Gaer** said that reports had been received of abuses, including forced abortions, of girls travelling, some as soldiers, with armed rebel units. Recognizing the difficulty of extending justice in such circumstances, she asked whether the Government had been able to identify perpetrators, investigate cases or provide assistance to victims.

The meeting was suspended at noon and resumed at 12.10 p.m.

Meeting with the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture

22. **The Chairperson**, welcoming the Chairperson of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, said that the Fund was one of the fundamental pillars in the effort to combat torture and its effects.

23. **Mr. Bodnar** (United Nations Voluntary Fund for Victims of Torture) said that meetings between United Nations Voluntary Fund for Victims of Torture and the Committee had facilitated meaningful dialogue and knowledge exchange. The increasing number of displacements and crises around the world highlighted the need for greater cooperation and communication between the different United Nations mechanisms to combat torture and support victims.

24. The Fund had allocated financial support totalling more than US$ 6.3 million for 2015 to organizations helping 56,900 victims in 81 different countries. A further US$ 1 million had been earmarked for emergency grants occurring outside of the regular granting cycle.

25. At a recent public event, some 120 expert practitioners from around the world had shared their experiences of working in the field and underlined the importance of the Fund in ensuring that redress and rehabilitation services were accessible to victims. Noting that the Fund would mark its thirty-fifth anniversary in 2016, he said that it had supported many rehabilitation centres and helped to develop and share knowledge and best practices.

26. Although more than 150 States had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, torture continued to occur. The Fund had customarily received more applications for funding than it could satisfy. There was a paucity of redress and rehabilitation services provided by States parties themselves, despite their obligations under article 14 of the Convention. The Fund's Board of Trustees would therefore make every effort to disseminate the Committee's general comment No. 3 on the implementation of article 14 by States parties among its grantees, many of which, in turn, also provided information to the Committee during the reporting procedure.

27. Although the right to rehabilitation had been established in international law, civil society organizations had often been the sole providers and, in some countries, had faced reprisals owing to their activities. Many rehabilitation centres had been wholly reliant on the Fund for financing, for moral support and, in some cases, for their very existence. An association with the Fund could provide a degree of legitimacy and independence, and could help to raise the organization's profile in terms of visibility and fundraising.

28. He said that the Committee's efforts to systematically raise the issue of rehabilitation and redress with States parties were commendable and could help to secure future contributions from Member States. The Committee's insights could also prove helpful in terms of how the Fund distributed its limited resources.

29. Lastly, he said that he looked forward to continued cooperation and said that the Fund and the Committee would be issuing a joint statement to mark International Day in Support of Victims of Torture on 26 June 2015.

30. **Mr. Modvig**, referring to a previous discussion in October 2014, asked whether the Board of Trustees had given further thought to creating a model to assist States parties in meeting their obligations under article 14. A standardized approach could provide some assurance for victims who were reluctant to take up State-provided assistance.

31. Victims of torture had multiple, complex problems and a holistic approach to rehabilitation had been identified as the best solution. In that regard, he asked why the Fund provided financial assistance to projects that were narrower in scope.

32. Lastly, noting that one NGO appeared on the 2015 list of grantees five times, he asked if the Fund considered whether an organization had access to other funding before awarding a grant. Did the Fund prioritize organizations at risk of reprisal or in countries with little or no alternative financing?

33. **Mr. Bruni** said that, in view of the recent decision to provide emergency grants, and the time-sensitive nature of such situations, he wondered what mechanisms had been put in place to award such a grant and how quickly the Fund could respond to a request.

34. **Ms. Pradhan-Malla** said that there were multiple layers of complexity in the process of rehabilitating victims of torture and that rehabilitation centres for those tortured by State actors faced additional challenges. She wondered what the Fund could do to address the threats of violence and reprisals faced by human rights defenders and rehabilitation centres. How could threats be minimized to provide a confidential and secure environment for victims?

35. She said that it would also be useful to know how the Fund identified where rehabilitation centres were needed. Were decisions based on the human rights record of a country, or were they based solely on NGO applications?

36. **Ms. Gaer**, referring to paragraph 4 of the Fund's latest annual report (A/HRC/28/25), which stated that beneficiaries of assistance must be direct victims of torture or direct family members, said that she wished to know whether the Board had any plans to harmonize its admissibility criteria with the broader definition under general comment No. 3.

37. Noting that the Board had launched a "Donate now" button on its website, she enquired how many donations had been made and how much had been raised through that initiative. She had been surprised to hear that only 15 States had donated to the Fund. The Committee had previously asked States parties whether they had contributed, but had re-evaluated the appropriateness of a monitoring body making that type of enquiry. However, it would be entirely appropriate for the Fund to actively seek funding from States parties itself.

38. Lastly, she said that the Fund had customarily supported a very high proportion of requests and she had noted with interest that it was seeking to introduce a competitive system in order to meet demand more effectively. She wondered whether specific criteria had been defined to make the process more competitive or whether a more rigorous evaluation system was envisaged.

39. **Mr. Tugushi** said that at a recent workshop with the International Rehabilitation Council for Torture Victims, there had been discussions on drawing up a checklist to enable article 14 to be approached in a more systematic manner.

40. Referring to the Board's fundraising activities, he said that the economic crisis had probably had an impact on contributions to the Fund. He noted with interest the Board's modern approach to securing donations and wondered low it was working in practice.

41. **Mr. Bodnar** (United Nations Voluntary Fund for Victims of Torture) said that developing a template for redress and rehabilitation was problematic. The situation varied so greatly from country to country that it was difficult to establish a model for cooperation between States parties, NGOs and rehabilitation centres. Some States were entirely unaware of the need to provide such services, in spite of their obligations under article 14 of the Convention. Rather than creating a model, perhaps more forums for encouraging experts and Member States to brainstorm challenges and share knowledge were needed.

42. Turning to funding holistic rehabilitation versus more narrowly focused services, he said that the Board had customarily been limited by the proposals it received and the capacities of the requesting organizations. While those providing a comprehensive range of services scored more highly during the evaluation process, some had taken advantage of the system by supplying misleading information indicating that they provided holistic services. It was, however, standard procedure for the Fund to verify the services offered by an organization.

43. While there was no easy solution to minimizing threats against rehabilitation centres and human rights defenders, as a United Nations entity the Fund had a presence in countries where there was no other international financing. For example, in countries where international funding to NGOs had been restricted, United Nations funding was difficult for a State to refuse. Ensuring that organizations were secure and could operate freely was a task that might better be performed by other United Nations agencies or international monitoring organizations.

44. As to identifying the need for rehabilitation services, he said that the Board could not provide funding where it did not have a local partner and it was therefore limited by the applications it received. The Board did consider whether services already existed in a particular country or whether it was the first potential local partner. In an ideal world, every country would have at least one organization providing support to victims, but that was not the reality. The Board did take into account United Nations observations on a country's human rights situation when making its decisions.

45. In relation to emergency grants, he said that the Fund could not necessarily respond very quickly as that might impact on service quality on the ground. While checks always had to be made before awarding a grant, even in emergency situations, the process was aided by cooperation between the Board and field offices of the Office of the United Nations High Commissioner for Human Rights (OHCHR). In situations where a verified local partner had already been established, funds could be distributed more quickly.

46. Lastly, the "Donate now" button had yet to be fully promoted by OHCHR. Members of the Board did meet with State party delegations to discuss the Fund and encourage States parties to contribute.

The meeting rose at 1 p.m.

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Summary record of the 1307th meeting
Held at the Palais Wilson, Geneva, on Thursday, 30 April 2015, at 3 p.m.

Chairperson: Mr. Grossman
later: Mr. Tugushi (Vice-Chairperson)

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This record is subject to correction.

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Second periodic report of Serbia (continued) (CAT/C/SRB/2; CAT/C/SRB/Q/2; HRI/CORE/SRB/2010)

1. *At the invitation of the Chairperson, the delegation of Serbia took places at the Committee table.*

2. **Mr. Ilić** (Serbia) said that a task force set up by the Ministry of Justice had proposed amendments to the definition of torture as it appeared in the Criminal Code, which were expected to be in place by late 2015, if not earlier. The Office of the Protector of Citizens, or Ombudsman, was still a very new institution, and its relationship with other Serbian institutions was steadily improving. The office was in a position to fulfil its mandate, and any attempt to prevent it from doing so was certainly not the intention of the Government, which had increased the office's budget in each of the past three years. Regarding asylum practices, it was true that the authorities' failure to update the list of secure third countries was not ideal; nonetheless, the system was flexible. The Constitutional Court, in fact, had recently ruled that institutions involved in reviewing requests for asylum should proceed on a case-by-case basis, taking into account criteria in addition to the asylum seeker's provenance.

3. **Ms. Dragičević-Dičić** said that a failed reform of the judicial system in 2010 had initially involved the non-reappointment of several hundred judges and prosecutors, despite constitutional guarantees of lifetime appointments. They had ultimately been reinstated, but the mood in their ranks was still one of fear and mistrust. The composition of the High Judicial Council, a body that ensured the independence of the judiciary, was such that judges, who were nominated by their colleagues, were guaranteed an absolute majority. An analogous body, the State Prosecutorial Council, was similarly composed. Although the budget for the judicial system was drawn up by the Government, it had finally been separated from the general budget, and the High Judicial Council determined how it was used. A disciplinary board made up of judges themselves examined possible breaches of judicial discipline. In 2014, five judges had been removed from office. Another five had resigned on their own, and several more had had their pay docked for minor breaches of discipline, mostly having to do with their failure to schedule trials or draft decisions in a timely fashion. Judges were entitled to appeal their removals or any other sanctions imposed on them.

4. Moving on to issues relating to pretrial detention and detainees' rights, she said that some of the information found in the report that Serbia had submitted to the Committee was out of date, as laws had since been amended. Persons placed under arrest were entitled to counsel from the moment of their arrest. Glass barriers, which were effective, had been set up in police stations to allow counsel and client to meet privately, in accordance with the new Code of Criminal Procedure. Counsel was appointed by the courts or by the police in accordance with a procedure established by the Bar Association of Serbia. Nonetheless, when she herself had been a trial judge, she had attempted to ensure that more experienced counsel was appointed for defendants facing more serious charges. All persons who were detained had to be brought before a judge within 48 hours of their detention. They were also entitled to a medical examination by a doctor of their own choosing.

5. References to mandatory pretrial detention had been removed from the Code of Criminal Procedure, and the courts had been encouraged to turn to such alternative measures as house arrest and bans on leaving the country. In that connection, it had been necessary to combat the view, once commonly held by the courts, that the ability to post

bail, for example, was simply a privilege of the rich. Pretrial detention could not exceed 6 months during an investigation. It was true that there were still many people in jail awaiting trial, but statistics from the Ministry of Justice showed clearly that the number was falling. Judges had received training on article 5 of the European Convention on Human Rights. The Ministry of Justice had records of the cases of persons awaiting trial. Secrecy in that regard was not a problem.

6. The right to interpretation was currently provided for under article 11 of the Code of Criminal Procedure, not article 4. It was difficult for Serbia, which had a shortage of qualified interpreters and a surplus of crafty defendants, to ensure that the right was respected. Under Serbian law, persons charged with a criminal offence were entitled not merely to be informed, in a language they understood, of the nature and cause of the accusation against them, but also to request that criminal proceedings should be conducted in their language. As a result, ethnic Bosniaks and Croatians, for example, who spoke languages largely identical to Serbian, demanded that court proceedings should be translated into Bosnian or Croatian. She had proposed an amendment to the relevant provision of the Code of Criminal Procedure to bring it into line with the European Convention on Human Rights and to lessen the absurdity of the situation.

7. Regarding human trafficking, Serbia had brought its criminal legislation into line with international standards. In the training provided to judges, it was stressed that the consent of a victim to exploitation did not exempt the exploiter from criminal liability. If it was established that victims of human trafficking or exploitation were forced to beg or commit petty theft, they were not prosecuted, as recommended by the Organization for Security and Co-operation in Europe. In some cases, the victims themselves became exploiters, and decisions about whether to prosecute such persons were sometimes mistaken, as had been noted in reports by ASTRA, an NGO devoted to combating human trafficking. A proposal to set up a public fund that would bear the costs of compensating trafficking victims was being studied. The fund would draw on assets forfeited by convicted traffickers, some of whom had recently received long prison sentences.

8. **Mr. Vulević** (Serbia), replying to a question about whether Serbia had entered into multilateral agreements to combat trafficking, said that Serbia was a signatory to several such agreements, the three most important of which were the United Nations Convention against Transnational Organized Crime, the Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings. The provisions of those instruments were directly applicable in Serbian law. Indeed, the text of article 3 of the Criminal Code drew directly on the Palermo Protocol. The social welfare services had recognized trafficking victims as a group requiring special support and protection. Shelters for trafficking victims were expected to be fully operational by September 2015. Committee members had referred to Serbia as a country through which trafficking victims transited, but it was in fact a country from which they originated. In recent years, the number of Serbian trafficking victims reported had increased, but it was his belief that the increase was largely the result of improved detection and reporting. Lastly, the social services had set up special teams in 120 local communities to reach out to street children, who were the group most vulnerable to being trafficked.

Mr. Tugushi (Vice-Chairperson) took the Chair.

9. **Mr. Pantelić** (Serbia) said that the various activities designed to combat human trafficking were coordinated by the Ministry of the Interior. Work was well under way on a draft national strategy for the prevention and suppression of trafficking in human beings, in particular women and children, for the period 2015–2020. The objective of the strategy was to build up the capacity of all the public institutions involved in anti-trafficking efforts and to ensure improved cooperation with civil society. The Government was expected to

approve the implementation of the strategy once estimates of its cost, which were currently being produced, had been properly evaluated.

10. Serbia had signed an agreement on strategic cooperation in 2014 with the European Union's law enforcement agency Europol. The agreement, annex 1 of which provided for cooperation in the area of trafficking in human beings, had greatly enhanced the capacity of the Serbian police.

11. The Ministry of the Interior had signed a Memorandum of Understanding with the National Crime Agency of the United Kingdom in 2014. A cooperation agreement had also been signed with Azerbaijan.

12. The International Organization for Migration (IOM) and the Centre for Protection of Victims of Trafficking in Human Beings (PVPT) were implementing a project, in partnership with the Ministry of the Interior, aimed at strengthening the system for the identification and protection of victims. In late 2014 the project had developed draft national indicators for the recognition of trafficking victims on behalf of the police and prosecutors.

13. **Ms. Dragičević-Dičić** (Serbia) said that 81 final judgements on cases of human trafficking had been handed down in 2013. The Ministry of Justice was developing a database of convictions disaggregated by age, gender, criminal offence and other factors.

14. All victims of torture were entitled to compensation, but it was difficult to exercise that right because criminal courts were not required to address the issue if such action would greatly prolong the duration of the proceedings. However, non-material damages were relatively easy to assess by physicians and psychologists and were therefore awarded more frequently by the courts.

15. The State was liable for damages sustained from war crimes. It had awarded compensation prior to 2000 to soldiers of the former Socialist Federal Republic of Yugoslavia who had sustained traumatic injuries during the wars in Croatia and Bosnia and Herzegovina. A 15-year statute of limitations was now applicable to damages for war crimes.

16. The Committee had been informed that statutes of limitations of 5 and 10 years were applicable to damages for the crimes of torture and coercion of confessions. Those were in fact relative figures and the absolute statute of limitations could in practice extend to 20 years. The Belgrade Appellate Court had recently repealed a first-instance decision because the 15-year statute of limitations had not been respected and had ordered a retrial. The same court had adopted a decision on 13 June 2014 concerning the torture of 55 persons of Muslim persuasion in 1995 in a camp near the town of Ujitsa. The ruling had led to the resumption of compensation proceedings on behalf of the persons concerned.

17. The Judicial Academy was fully independent. It was funded by the Ministry of Justice. The Management Board was composed mainly of judges and the curriculum had been endorsed by the High Council of the Judiciary and the State Prosecutorial Council.

18. The Code of Criminal Procedure, as amended, provided for summary proceedings under article 137 of the Criminal Code, in cases where the offence entailed a prison sentence of less than 8 years. As the potential penalty for crimes of torture and ill-treatment exceeded 8 years, summary proceedings did not apply in such cases. An aggrieved party could not proceed with a prosecution if the prosecutor decided, upon investigation, not to file an indictment. However, the aggrieved party could file an objection with a senior prosecutor.

19. Four persons had been convicted of torture or ill-treatment in two judgements concerning the rehabilitation centre for drug addicts in Crna Reka. The manager of the

centre had been sentenced to 20 years' imprisonment. Proceedings were being conducted against five persons for torture and ill-treatment in the correctional institution in Požarevac. The head of the centre and three wardens had been prosecuted for failing to take the requisite supervisory measures.

20. **Mr. Rabrenović** (Serbia) said that Serbia had received five recommendations concerning war crimes during its negotiations with the European Union. They were set out in the third version of the Action Plan. The Ministry of Justice had established a working group to draft a national strategy for the prosecution of war crimes. A prosecutorial strategy setting out criteria for addressing priority cases was also being drafted. The capacities of the War Crimes Prosecution Office would be strengthened and steps would be taken to promote closer cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). Priority would be given to cases against high-ranking suspects. He confirmed that rape would be treated as a war crime.

21. The Ministry of Justice had accepted a recommendation from European Commission experts concerning the conduct of an impartial and independent audit of the Witness Protection Unit of the Ministry of the Interior. Perpetrators of war crimes involving mass graves had been prosecuted in four or five different cases. Serbia had given the ICTY Office of the Prosecutor access to its archives. The evidence found in the archives had enabled ICTY investigators to identify a leading perpetrator of crimes involving the transfer and concealment of bodies.

22. **Ms. Stepanović** (Serbia) said that prisoners underwent a medical examination not more than 24 hours after being admitted to prison. That time limit had been exceeded in a small number of cases because of a shortage of physicians, but 48 hours was the absolute limit. Prison officials could be present during the examination only at the physician's request. A medical file was maintained for each prisoner, and physicians were required to report any injuries from coercion measures to the prison director without delay. The Ombudsman had stated in his 2014 report that his recommendations had been implemented and that the medical reports contained the requisite data.

23. The Directorate for enforcement of penal sanctions had achieved significant results through its strategy for reducing prison overcrowding during the period from 2010 to 2015. Its implementation had required the enactment of the Amnesty Law, the Law on enforcement of penal sanctions and amendments to the Criminal Code and the Criminal Procedure Code. The wider application of non-custodial sanctions included community service, house arrest and conditional release. As a result, the number of detainees had declined from about 11,300 in 2011 to about 10,500. The current capacity of penal and correctional institutions was 9,000. The Law on enforcement of penal sanctions provided for a space of at least 4 square metres for each detainee. The current average figure was 3.5 metres. Conditional release had accounted for 20 per cent of all releases in 2014. During the same year, 1,566 alternative measures and sanctions had been implemented. Offices for the enforcement of alternative sanctions had been opened at all higher courts.

24. In February 2012 a new high-security prison for 450 detainees had been opened. The construction of new juvenile facilities had been completed in October 2013. Three units of Belgrade District Prison had been reconstructed in 2013 and 2014. The Special Prison Hospital would be fully refurbished by 2017.

25. **The Chairperson**, speaking as Country Rapporteur, said that the Ombudsman should on no account be denied access to the information he required to fulfil his mandate, especially information on criminal incidents. In some cases, defendants had no contact with their assigned legal counsel until the first hearing. The last report of the European Committee for the Prevention of Torture had contained complaints about legal aid services provided by the Bar Association. While he welcomed the decline in the number of

detainees in remand custody, he recommended that further action should be taken to promote alternatives to imprisonment. Both judges and prosecutors should be made aware of the benefits of non-custodial measures. He stressed the importance of producing disaggregated data concerning torture, ill-treatment and current prosecutions.

26. Noting that persons returned from Hungary to Serbia were often transferred to the former Yugoslav Republic of Macedonia, he asked whether the persons concerned could request asylum in Serbia, and whether they were guaranteed access to legal remedies, free legal aid and interpretation services. He also wished to know whether there had been any investigations into alleged corruption and ill-treatment by immigration officials.

27. He enquired about the right of Serbian police officers to summon persons for "informative talks" that could last for up to four hours. Did the persons concerned have access to a lawyer? The Committee had been informed of allegations of ill-treatment in police custody and in Leskovac District Prison. Some complaints had allegedly been withdrawn under pressure and intimidation. He asked whether those allegations had been investigated. The Committee had also been informed that only two police officers had been convicted in the course of 79 criminal proceedings concerning torture and ill-treatment between October 2012 and November 2014. The sentence against one convicted officer had been suspended and an 8-month sentence had been handed down against the other officer. The prosecutors had abandoned the investigations in the remaining cases or the courts had ruled in favour of the officers concerned. He therefore concluded that impunity was still a serious issue.

28. According to paragraph 116 of the report, the Internal Control Department of the Ministry of the Interior had received 391 complaints concerning police officers. He asked whether such complaints were also communicated to the Public Prosecutor's Office. The Committee had been informed of the failure to prosecute senior officials for command responsibility for the torture and murder of over 200 Croatian civilians. He asked whether there had been any change in that situation.

29. The Higher Court in Belgrade that dealt with war crimes and the War Crimes Prosecution Office reportedly lacked sufficient resources and funding. He asked whether any steps had been taken to reinforce the War Crimes Investigation Service. The law enforcement authorities allegedly failed to act with due diligence to tackle crimes motivated by hate or racism. He wished to know whether there had been any improvement in that regard. He also requested information regarding investigations of verbal attacks, harassment and attempted intimidation of independent journalists by public officials.

30. **Ms. Pradhan-Malla** (Country Rapporteur) asked how international treaties were implemented at the domestic level. She enquired about the status accorded to foreign victims of trafficking in human beings under Serbian immigration law.

31. **Mr. Bruni** said that the National Assembly, acting on a recommendation from the Ombudsman, had ordered the Government to allocate the necessary funds in the budget proposal for 2015 for the construction or refurbishment of detention rooms in police stations so that they complied with applicable standards. The National Assembly had also requested the Government to consider transferring responsibility for the administration of health services in prison facilities from the Ministry of Justice to the Ministry of Health. He asked whether the Government had acted on those recommendations.

32. **Mr. Domah** said that, under article 2 of the Convention, the judiciary was required to take steps in its own right to prevent torture. Court judgements should therefore provide guidance to the executive and legislature, and one or two ground-breaking pronouncements would help establish the leading position of the judiciary in the democratic system Serbia was trying to create. It was important for the judiciary to have full control of its own training, for only the judiciary could know its own needs. Training should cover the

concept of timely access to counsel and include a specific component on the Convention. In cases of prison deaths, it was important that joint perpetrators and accomplices were prosecuted too.

33. **Ms. Gaer**, referring to question 25 in the list of issues (CAT/C/SRB/Q/2), said that the Ombudsman's Office, when inspecting police stations in its capacity as national preventive mechanism, had noted that there were non-standard issue objects such as baseball bats, iron rods and wooden sticks in interview rooms. A common explanation was that they were items confiscated by the police and that there was nowhere else to store them, but the Committee found it troubling and she wondered what was being done to prevent that situation arising.

34. According to the report from the Humanitarian Law Centre, many Serbian police and military officers, who had been indicted in connection with alleged war crimes or concealment of war crimes, were still in senior positions and obstructing investigations. Moreover, 15 per cent of those indicted had apparently been in active service at the time of indictment. She would like to know if any thought was being given to introducing background checks in order to prevent such persons holding positions of authority in which they could continue to commit abuses. She noted that the law currently did not require the removal of individuals subject to criminal proceedings. Was any such measure under consideration?

35. **Ms. Belmir** said that she welcomed the recent legislation designed to regulate and strengthen the judiciary. Judges were appointed on objective criteria relating to merit and competence, and elected by their peers. However, their appointment then had to be confirmed by the National Assembly. That procedure undermined the separation of powers and trespassed on the independence of the judiciary. Moreover, no evaluation of judges' work should result in the bringing of criminal charges. A bad judgement could be challenged in a higher court – it was not a criminal offence.

36. **Mr. Modvig** said that the system of compensation for victims did not provide prompt and effective remedy as required under the Convention. In some cases compensation was awarded under contract and tort law, and it could take many years; in addition victims were required to go and identify the perpetrator, and the statute of limitations applied. A nationwide needs analysis should be carried out and appropriate legislation drafted to meet the requirements of redress, including rehabilitation for all victims.

37. **Mr. Zhang** said that he appreciated that, with the judicial database not yet perfected, it was difficult to obtain detailed information on committals. However, he would welcome some rough figures on the number of cases of war crimes that had already been prosecuted and how many might need to be handled in the future if the perpetrators were identified.

38. **The Chairperson**, turning to the question of involuntary placement in mental health-care institutions, asked whether there had been any new mental health legislation since 2011. Was there any requirement for courts to take their decisions on involuntary hospitalization in an expeditious manner, especially when committing someone to a specialized institution? He wondered whether there was any provision to systematically inform those who were to be committed of the courts' or the psychiatric commissions' decisions. Did those patients have access to legal assistance independent of the admitting hospital? There were reports that mechanical restraints, when needed, were applied in full view of other patients. According to the Ombudsman's report such measures were subject to regulation and he wondered whether those regulations were applied.

The meeting was suspended at 5.10 p.m. and resumed at 5.20 p.m.

39. **Mr. Ilić** (Serbia) said that the question of access to counsel was a matter of legal ethics. The legal profession was independent, with its own bar association and disciplinary procedures to ensure that ethical standards were observed. On the question of prison overcrowding, he said that standards were already good, but thanks to the budget allocated to prison building and the construction schedule it was only a matter of time before further improvements would be seen.

40. It was true that there were problems with crime statistics, but progress had been made in cooperation with the European Commission and as part of the European Union accession process. Consideration was being given to installing state-of-the-art statistical systems such as those used in the Netherlands. In the case of torture in Leskovac prison, the State had responded and five individuals were being prosecuted. The Ministry of the Interior's internal oversight body always cooperated with the public prosecutor's office whenever a member of the Ministry of the Interior committed a crime.

41. No statistics were available on convictions of police officers but they could be provided at a later date. The National Assembly had given clear instructions to the Government to improve conditions in police stations. The Ministry of the Interior, as the ministry responsible, took the order very seriously. There was a schedule of works outlining the specific measures to be taken. As to the transfer of prison health care from the Ministry of Justice to the Ministry of Health, the process was under way. It was a lengthy and expensive undertaking and was being carried out in cooperation with the Ombudsman's Office. The latter had made over 250 recommendations following its inspection of prisons. All the key recommendations would be implemented. A commission had been set up to oversee removal of non-standard equipment from police stations. The very serious allegations that serving police and military officers had been involved in concealing war crimes needed to be substantiated. As to training for the judiciary, he said that the new Judicial Training Academy was soon to provide advanced training for judges and prosecutors in crimes under the Convention.

42. **Mr. Rabrenović** (Serbia) said that 175 people had been prosecuted for war crimes and 68 convicted in the upper court, while 24 cases were under investigation and 40 were in the pre-investigation stage. Indictments to date concerned over 4,300 victims. In the future more complex cases of joint liability and crimes against humanity could be expected to come before the courts. In the Ovčara case there had been convictions and the next trial was scheduled for June 2015.

43. Background checks on police and military were envisaged in the recommendation in the action plan relating to witness protection. Anyone suspected of war crimes was suspended in accordance with the law. International conventions ratified by Serbia had the same rank as domestic law. In terms of their application to past crimes against humanity, it was necessary to look at what customary law had been in force at the time.

44. **Ms. Velimirović** (Serbia) said that Serbia was not in a position to cope with the huge increase in asylum seekers. In 2014 there had been 16,000 and in 2015 to date 10,000. In the winter of 2013–2014 a humanitarian disaster had been only narrowly averted when additional capacity had been installed. Few decisions were taken, compared with the large number of applications. The average length of stay in reception centres was around 10 days. Efforts were being made in cooperation with the European Union and the Office of the United Nations High Commissioner for Refugees (UNHCR) to increase capacity and improve training, with positive results. Expulsion was prohibited if there was a risk that the person could be subject to torture and the data showed that no refoulement took place where that was the case. As to persons coming from Hungary, she said that all those whose applications had been adjudicated, and provided that no final decision had been taken by the courts, would be returned.

45. **Mr. Vulević** (Serbia) said that involuntary hospitalization was regulated by the laws on non-contentious proceedings and on the protection of mental health. Accordingly, the courts took their decisions within 24 hours. As to reports of people being hospitalized against their will without due process, he said that the number fell within the margin of statistical error and the figures were not based on a valid sample. Victims of trafficking were entitled to reside in Serbia regardless of their involvement or otherwise as witnesses in proceedings.

46. **Mr. Jokić** (Serbia) said that, according to the regulations introduced in 2013, measures of restraint on mental health patients were to be used only to ensure their own or another person's safety and provided all other measures had proved ineffective. They were to be applied by competent medical personnel for only the length of time absolutely necessary and not in such a way as to degrade or humiliate or prevent access to treatment.

47. The number of reported deaths referred to all persons in inpatient care who had died in psychiatric institutions in the five-year period 2010–2014. The figure given in the annex to the report was the number of persons admitted without their consent during that period. As could be seen, the number of women was lower and no conclusions could be drawn concerning a single category of patient from the data on the total number of persons treated and the total number of deaths. It should be noted that the total number of patients was considerably higher than the number of those admitted involuntarily. In general, the total number of beds in special psychiatric hospitals had been reduced and would continue to be reduced as mental health care in the community was prioritized. The Ministry of Health would work on improving oversight.

48. **Ms. Mohorović** (Serbia) said that in the individual cases mentioned by Mr. Grossman monetary awards had been made for damages. A mechanism to monitor implementation of treaty body recommendations had been set up in late 2014 in compliance with the recommendations of the universal periodic review. As to the Roma minority in Belgrade, she said that 303 families, and in late 2014 a further 24, had been housed, while 25 families were awaiting completion of their housing units.

49. **Mr. Rabrenović** (Serbia) said that the Ministry of the Interior and the Ministry of Justice would be taking steps to set up a register of torture cases as soon as possible.

50. **Mr. Pantelić** (Serbia) said that, in the case of the assault on Slobodan Stojanović at the Belgrade Pride Parade, the Ministry of the Interior had submitted several criminal reports to the relevant body in accordance with the Criminal Code.

The meeting rose at 6 p.m.